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THE AUTHORITY OF VATTEL

II

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In a previous paper¹ the attempt was made to state Vattel's system of municipal and international jurisprudence, and to show in a general way the authority attributed to his treatise on international law. It remains for us to consider the technical rules of international law proposed by Vattel and thus to lay the basis for a critical estimate of the position to which his treatise is entitled among the classics of international law.

The rules of conduct which nations have voluntarily adopted for themselves, and which therefore constitute the law between them, may be divided, with regard to their intrinsic character, into two general classes: first, rules which define certain principles of moral conduct or which embody the recognition of certain fundamental rights of states, and secondly, rules which define the concrete application of principles to the practical relations of states. Chief of the rules defining principles of moral conduct is the rule of good faith between nations, which in its many applications pervades the whole field of international law. This rule of good faith is not merely an *a priori* conception deduced from the analogy between sovereign states as members of an international community and private persons as members of society; it is a rule of positive international law, accepted by nations as properly controlling their conduct, and appealed to by them in their diplomatic relations. Among the rules expressing the fundamental rights of states may be classed the principle of the equality of sovereign states, the principle of the right of self-preservation, of the sovereign jurisdiction of a state over the territory belonging

¹ *The American Political Science Review*, August, 1913.

to it, of the independence of the state in the administration of its domestic concerns. These rules, like those defining principles of moral conduct, are part of the positive law accepted by nations, whatever theoretical basis may be assigned them by the Grotian of school writers.

In contrast with the abstract principles of international law there is the large body of practical rules which have developed from the application of abstract principle to the actual intercourse of states. Thus the application of the rule of good faith to the status of war has developed the rule that conventions between the belligerent parties, armistices, truces, cartels, etc., the so-called "*commercium belli*," must be faithfully observed in spite of the fact that war itself is an extra-legal procedure. Again, the application of the abstract rule of the sovereign jurisdiction of a state over its territory gives us specific rules defining the jurisdiction of a state over its coastal waters, the right of a state to determine the status of foreigners resident within it, the jurisdiction of a state over its merchant vessels on the high seas, etc. Many of these practical rules are of the highest importance as involving an essential deduction from fundamental principles; whereas others are of secondary importance as involving rules of practical utility but not touching the vital interests of states.

The above distinction has been made for the purpose of facilitating the criticism of Vattel's exposition of the rules of international law. It is to be expected that, inasmuch as the essential relations of states within the family of nations have not changed in the period from 1759 to the present day, Vattel's statement of fundamental principles should remain a fairly accurate statement of the existing law of nations, whereas on the other hand it is natural to look for modifications in many of the practical rules of international law owing to the changed circumstances of international life. The increased volume of international commerce, the methods of modern finance, the facilities of modern intercourse, immigration to the new world, the changes in the methods and instruments of warfare, not to mention moral influences of one kind or another, have of necessity made their effect felt in enlarging on the one hand, or restricting on the other certain of

the rights and duties of nations. To do justice to Vattel, therefore, we must keep in mind the distinction between abstract principles of conduct which are more or less immutable, and the application of those principles to the concrete facts of life which change with the progress of the world.

In turning from the first book which deals with the nation or state in its individual character, to the second book, which deals with the nation considered in its relation to other nations we cannot but be struck with the words with which Vattel prefaces his statement of the mutual duties of nations. "My principles," he says, "are going to appear very different from the policy of cabinets, and to the disgrace of human nature many of those polished rulers of nations will ridicule the doctrines of this chapter. Nevertheless, let me state boldly what the law of nature prescribes to nations."² These words furnish us the key to an understanding of Vattel's position. He boldly cuts loose from the practice of nations and takes his stand upon the theoretical basis of the law of nature. It matters not whether states have as a point of fact actually observed such and such rules in their dealings with one another; international custom has of itself no binding force and cannot be appealed to as the source of an alleged duty or the justification of an assumed right. The great determining principle in international conduct is the conformity of a given act to the abstract law of nature. Thus instead of first ascertaining the actual practice of nations upon a given subject and then criticising that practice in the light of recognized principles of moral conduct, Vattel is satisfied with stating the abstract principle, and he often leaves us in doubt as to whether the principle was recognized by states at that day and, if so recognized, whether it was generally applied in their mutual intercourse.

With regard to the fundamental principle upon which modern international law is based, the independence and equality of sovereign states, Vattel's doctrine needs no amendment, although we may dispute the source from which he derives it. Nations, he says, are free and independent each of the other, because the

² Book II, §1.

men who compose them are by nature free and independent. While the citizens of the individual state have renounced in part that liberty which they possessed in a state of nature, the states themselves still retain it as a natural right.³ In like manner, he says, since men are by nature equal and have the same rights and obligations, so states are by nature equal and derive from nature the same rights and obligations.⁴ This *a priori* reasoning is unsatisfactory, but Vattel at least stops short of the modern idea frequently met with that independence and equality are inherent attributes of states arising from the very nature of the society existing between them. The facts are to the contrary. The states which recognized the supremacy of the Holy Roman Empire did not cease to be states, although on many points their sovereign jurisdiction was restricted in one way or another.⁵ Nor would a law between nations become impossible merely because they entered into a federation of the loose type provided for in the articles of confederation adopted by the American colonies in 1781, or even one of a closer type such as that between the same states under the constitution of 1789.

That the equality between states is legal, not political, is clearly recognized by Vattel, as well as the rule that changes in the form of the government of a state do not affect its international position. The question of precedence, was, however, an important one in those days. Memories of the claim of the Holy Roman Empire to precedence among the states of Europe made rulers of the fourteenth and fifteenth centuries on their guard lest any undue show of courtesy should be interpreted as acquiescence in a claim of superiority. Likewise the title which a sovereign may properly assume is discussed by Vattel at considerable length. It is difficult at the present day to imagine the petty quarrels and jealousies which centered around the question of the honor due to this sovereign and to that, and the marks by which it should be distinguished. One instance cited by Vattel is the agreement between the plenipotentiaries of France and of the Empire at the

³ Ibid., Preliminaries, §4.

⁴ Ibid., §18.

⁵ See T. J. Lawrence, *International Law*, 4th edition, pp. 119-120.

time of the treaty of Westphalia that "when the king and queen should write to the emperor in their own hand and accord him the title of *Majesty*, the emperor should make answer in his own hand and accord them the same title."⁶

What exceptions must be made to the fundamental principle of the sovereignty and independence of states? What circumstances will justify one state in intervening in the domestic affairs of another state? Vattel finds two principal grounds in justification of intervention: self-preservation, and the moral obligation of restraining wrong-doing. In the interest of self-preservation a state may violate the sovereignty of another state to prevent a threatened evil whether the danger be proximate or remote. Vattel lays down the general principle that "a nation has the right . . . to anticipate designs against itself, though it must be careful not to attack another state upon vague and doubtful suspicions, in order not to become itself an unjust aggressor."⁷ The indefiniteness of such a rule makes it unsatisfactory, but even at the present day it is admitted that it is "impossible to lay down a hard-and-fast rule regarding the question when a state can or can not have recourse to self-help which violates another state."⁸ When the threatened evil is proximate there is less difficulty in determining the justice of intervention to prevent it. Vattel frames a case which would be answered in the affirmative today as in his time. After stating that it is unlawful for a state to commit hostilities upon the territory of a neutral state, he continues as follows: "On the other hand it is certain that if my neighbor offered an asylum to my enemies when they have been worsted and are too weak to escape from me, and if he allows them time to recover and to watch for an opportunity to attempt a new invasion of my country . . . he justifies me in attacking them in his territory. This is what happens to nations which are not in a position to make their territory respected."⁹ The violation of American territory by the Canadian

⁶ Op. cit., Book II, §44, note.

⁷ *Ibid.*, Book II, §50.

⁸ Oppenheim, *International Law*, 2d edition, I, 186.

⁹ Op. cit., Book III, §133.

government in 1837, when a British force crossed the Niagara river and captured the *Caroline*, would have been justified by Vattel, as it is by writers of the present day,

When the danger of the threatened evil is remote it is impossible to do more than to lay down certain general rules which may serve to guide the conscience of a state, but which are too indefinite to be of any practical value. Vattel sets himself resolutely to answer the "celebrated and most important" question whether intervention is justifiable in the interest of the balance of power. Can a state take up arms against another state on the sole ground that the latter is becoming inordinately strong? It is significant that Vattel realizes that governments have never hesitated to answer the question in the affirmative; it is only the moral aspects of the question which need be discussed. On the one hand, considering the question in the abstract, there can be no doubt, Vattel thinks, that a mere increase of power on the part of a foreign state cannot, alone and of itself, justify a state in taking up arms to resist it. But on the other hand, knowing that the possession of power is almost always attended by its abuse, Vattel is ready to infer from previous marks of pride and ambition in the conduct of the foreign state a sufficiently conclusive proof of future hostile intentions to warrant the neighboring state in taking prompt action, first to obtain securities against misconduct, and if these are not forthcoming, to anticipate the impending attack. "One may forestall a danger in compound ratio to the probability of the threatened evil and to its gravity." As an instance in point Vattel cites the coalition against Louis XIV in the war of the Spanish Succession.¹⁰ Vattel thus endeavors to reduce the political principle of the balance of power to a legal basis, but after much discussion he can arrive at no more definite rule than that "the safest thing to do is to weaken a state which has disturbed the balance of power, as soon as a favorable occasion can be found and it can be done with justice (i.e. there must be ground for fearing aggression); or else by any honest means to prevent the state from arriving at so formidable a degree of power."¹¹ This is

¹⁰ Op. cit., Book III, §44.

¹¹ Ibid., §49.

wholly unsatisfactory as a rule of law between nations, but even at the present day it is impossible for writers to do more than state the general principle of the necessity of the balance of power. The nineteenth century no less than the seventeenth and eighteenth centuries witnessed several wars and many alliances in the interest of the balance of power, and within less than a year international law has been found unable to furnish a basis for the adjustment of the balance of power in Eastern Europe. It is amusing to see how Vattel, who has always an eye to political as well as to moral issues, labors hard to prevent statesmen from thinking that the principles which he is advocating will tie their hands in the effective conduct of foreign policy.

Somewhat remotely connected with the above-mentioned forms of intervention is intervention in restraint of wrong-doing, even though the state which intervenes is not directly affected by the illegal act. Vattel justifies such intervention on the ground that if gross violations of international law are to go unpunished the peace and security of all nations will be endangered. Accordingly he asserts that "all nations are justified in resisting by force a state which openly violates the laws of the society that nature has established between them, or which directly attacks the welfare and the safety of that society."¹² Upon this principle the intervention of France or of Great Britain to prevent the partition of Poland could readily have been justified; indeed, it may even be said that intervention was obligatory upon them if they were not to be made accessories to the crime. In 1792 when the national convention issued a decree authorizing the French army to go to the assistance of those who were oppressed in the cause of liberty in all countries, Great Britain rightly treated the proclamation as a declaration of war.

Apart from the justification of intervention upon political grounds where the material welfare of the intervening state is involved, Vattel is ready to recognize a moral obligation to intervene based upon the duty of each state to contribute to the welfare of other states, in so far as it can do so without injury to itself.¹³

¹² *Ibid.*, Preliminaries, §22.

¹³ *Ibid.*, Book II, §4.

Such an obligation, however, has no place in international law of the present day. Nor is it possible to maintain Vattel's general principle that a state may interfere between a sovereign and his subjects in favor of the latter when their constitutional rights are being denied them and their religious privileges restricted, nor his principle that "when affairs come to the point of a civil war, foreign powers may assist the party which seems to them to have justice on its side."¹⁴ Both principles would open the way to arbitrary intervention which would undermine the fundamental law of the independence of states.

On the other hand intervention to prevent religious or racial persecution involving personal suffering, or to restrain excessive cruelties in warfare was often resorted to during the nineteenth century. It is common with authors to justify such intervention as being "in the interest of humanity," but it is difficult to see how that principle can be reconciled with the present system of international law which recognizes no higher authority than that of the separate states. A better ground would be that persecution for religious belief, etc. disturbs in a very real way the peace of mind of persons of similar religious convictions in other countries, and therefore becomes equivalent to an international nuisance. Vattel recognizes a right to intervene when persecution on account of religion has been carried to "intolerable excess,"¹⁵ in accordance with his general principle of justifiable interference between a sovereign and his subjects.

Passing from the question of intervention to that of the responsibility of the state for the acts of its citizens we find Vattel defining clearly the circumstances under which a state is to be held responsible for the act of an individual citizen or of a small group of citizens. "As it is impossible," he says, "for the best regulated state, or for the most vigilant and absolute sovereign, to control all the actions of his subjects and to keep them on all occasions under the strictest obedience, it would be unjust to repute to the nation, or to the sovereign, all the faults of the citizens. But if the state or its ruler approve and ratify the act of the citizen, the

¹⁴ Ibid., Book II, §56.

¹⁵ Book II, §62.

injured party may then regard the state as the real author of the injury and the citizen as merely its instrument."¹⁶ Then follows a statement of the duties of the sovereign towards fugitive criminals. There were no general treaties of extradition at that time, but Vattel is able to state that "murderers, incendiaries, and thieves are, at the requisition of the sovereign in whose territory the crime has been committed seized wherever found and delivered up to him for trial."¹⁷ The context apparently makes the rule apply to persons who have committed a crime in a foreign country and escaped back to their own country, and in that respect the rule goes beyond the provisions of most extradition treaties of the present day.

Coming to the broad question of the jurisdiction of a state over the persons within its borders and over the territory subject to it we find that Vattel is, except in a few instances, fairly in accord with the modern principles of international law. After a rambling *a priori* argument which suggests the influence of Rousseau, Vattel adopts the *jus sanguinis* and expressly rejects the *jus soli*¹⁸ as the test of citizenship, but he practically admits Great Britain's adoption of the *jus soli* when he says that "there are countries, such as England, in which the mere fact of birth within the country naturalizes the children of an alien." The subject of naturalization naturally leads Vattel to discuss the "celebrated question whether a man can abandon his country or the society of which he a member," this is, whether there exists a natural right of expatriation. Two cases are presented: the son of a citizen may, when arrived at the age of reason consider whether it suits him to join the society with which he is associated by birth, and if he decides in the negative he may leave it, but must compensate it for what it has done for him, an idea which Vattel says was expressed in the *traites-foraines* (emigration taxes). In the second case, where the son of a citizen on reaching maturity acts as a citizen, he impliedly adopts the citizenship of the state and can only thereafter abandon his country, if in so doing he does not

¹⁶ Book II, §§73, 74.

¹⁷ *Ibid.*, §76.

¹⁸ Book I, §212.

cause it serious injury. To abandon it in time of danger would be manifestly to violate "the social compact."¹⁹ In addition to the qualified right of expatriation in the above mentioned case, a citizen has an absolute right to abandon his country (1) when it cannot furnish him with the necessary means of subsistence, (2) when the state fails absolutely to fulfil its obligations toward him [the character of which is not mentioned], and (3) when the state establishes laws, e. g., with regard to religion, to which the social compact does not oblige the citizen to submit.²⁰ These theoretical cases are of no practical value, but it must be remembered that the question of expatriation had not at that period the importance which it required in the nineteenth century when emigration from Europe to the new world took on enormous proportions. It is consistent with Vattel's democratic spirit that he denounces the "vicious custom" prevailing in certain countries a few centuries before his time by which a state could not admit to its citizenship the subject of another state.²¹

With respect to the exclusion of alien immigrants Vattel recognizes both the right of the state to exclude them absolutely, and the consequent right to impose conditions of admission. The subject is briefly disposed of, for the author was not living in an age when emigration from overcrowded countries and the quest for foreign markets and industrial concessions have made it practically impossible for a state to cut itself off from the outer world.²² A curious instance of Vattel's fondness for discussing wholly imaginary situations is to be found in his discussion of the rights of an exile. An exile, he says, being still a man has a right from nature to dwell somewhere on the earth; but this right, while a necessary and perfect one in the abstract, is conditioned in its exercise by the permission of the foreign sovereign to enter his dominions, which may be refused for good reasons.²³ An exile might thus wander about the world with an abstract right to

¹⁹ *Ibid.*, §220.

²⁰ *Ibid.*, §223.

²¹ *Ibid.*, §225.

²² Book II, §§94, 100.

²³ Book II, §§229-231.

settle somewhere but without a concrete right to settle anywhere. The case is merely mentioned as an example of Vattel's failure at every point to distinguish between moral and legal rights and duties.

Vattel's discussion of the question of title to territory acquired by discovery and occupation reminds us in a striking way how different were the conditions under which his treatise was written from those prevailing at the present day. Vattel lived in an age when the great powers of Europe asserted claims to wide reaches of territory in the new world, the whole extent of which they did not pretend to have mapped out, much less to have settled. Yet here again we find him announcing what is practically the modern rule, that "the law of nations will not recognize the *ownership* and *sovereignty* of a nation over uninhabited lands unless it effectively occupies them, forms a settlement upon them or makes actual use of them."²⁴ The rule thus stated was not, it is true, generally observed at the time, and even as late as 1827 the United States asserted in the Oregon boundary dispute that by the occupation of the land at the mouth of a river the whole territory embraced by the river and its tributaries was brought under the sovereignty of the state.

Another question which illustrates the great gap between the international law of 1758 and that of the present day is the subject of international rivers. Vattel lays down a series of tests for determining to which of two co-riparian states the river which forms the boundary between them belongs.²⁵ Even as late as 1805 Lord Stowell admitted that such rivers might by prescription, prior settlement, cession or otherwise come under the exclusive jurisdiction of one of the riparian states.²⁶ At the present day they are the common property of the states through which they flow. Again, Vattel, following the doctrine of Grotius, holds that while a river may be subjected to the ownership and sovereignty of the state within whose territory it lies, yet other nations have a right of passage remaining to them from the primitive

²⁴ Book I, §208.

²⁵ Book I, §266.

²⁶ 3 C. Rob., 338-340.

community ownership of all property.²⁷ This right is based upon the principle that all nations have a right to the innocent use of the property of another,²⁸ and it cannot be restricted by the owner by the imposition of tolls, except in so far as such tolls are necessary to keeping the river navigable.²⁹ But inasmuch as the owner of the river is the one who has the right to decide whether a given use is innocent or not, the right left to others is of no practical value. At the present day international law does not recognize a right on the part of the nations to use a river which is the property of a single state. It does, however, recognize the principle of free navigation for all the world upon all the rivers of Europe (and several outside Europe) which either separate or pass through two or more states.

The subject of treaties between nations fills up six chapters of Vattel's treatise and in the opinion of the writer constitutes perhaps the most successful part of the whole work. The various kinds of treaties are explained at length, the obligations resulting from them, the sureties to be given for their observance, with detailed rules for their interpretation. Here again, however, Vattel discusses many points which have ceased to claim a place in modern text-books, such as the question whether it is permissible to make an alliance with those who do not profess the true religion,³⁰ and the question whether an alliance between two sovereigns stipulating for the mutual defense of their royal persons is binding in case one of the parties be driven from the throne by a revolution.³¹ In other instances Vattel discusses purely moral issues, which, in the absence of a supreme court of the world to decide disputes between nations, can never be brought under the domain of international law in the positive sense of a law accepted by nations. Whether an alliance is binding when one of the allies enters upon an unjust war³² can, as a statement of moral principle have but one answer; but until there is some supra-national

²⁷ Book II, §123.

²⁸ Book II, §127.

²⁹ Book I, §104.

³⁰ Book II, §162.

³¹ Book II, §196.

³² Book II, §168.

authority to decide when a war is to be pronounced unjust, the question must remain outside the field of positive law. There are, however, certain moral principles of an abstract character which by reason of their general acceptance by nations have come to form part of the body of international law. The rule of good faith between nations is a rule of positive law.

The chapter on the interpretation of treaties is an excellent statement of rules which, derived from Roman law and embodying sound common sense, may claim a qualified position within the body of international law. On the whole, Vattel's reasoning upon the moral issues involved in the making and observance of treaties is worthy of high praise and it is only when he occasionally endeavors to reconcile principle with common, but wrong, practice that room can be found for criticism.

Passing to the subject of war we find Vattel, like Grotius before him, discussing at length the "just causes of war." In his customary rôle of counselor he first draws a distinction between the grounds which justify war and the motives which may lead the state to undertake it. The chief grounds of justification are self-defense and the maintainance of one's rights. But granting that a state has sufficient justification, it must not go to war from motives of vengeance, hatred, or the desire of conquest, lest it thereby abuse the right which it possesses. Vattel thus leads us into the broad field of casuistry where it is hardly profitable for the international jurist to tread. At the present day it is generally agreed that it is beyond the scope of a treatise on international law to draw a distinction between just and unjust causes of war. The causes of war are so varied in character and involve so many complex motives that it is simply impossible to find any legal standard by which they may be measured. There are, it is true, certain rules of a purely abstract character, such as the right of self-defense, the right to obtain redress for injuries, which have a legal status in international law as being just causes of war, but when it becomes a question of applying these rules to a concrete situation arising between two nations, the problem is immediately raised above the domain of positive law into that of international morality. There are, indeed, certain cases of out-

rageous aggression, such as those of the later Napoleonic campaigns, which are declared unjust by the practically unanimous voice of the civilized world, and war in that instance might be called in the strict sense "unlawful" as well as unjust. But as a rule the balance of right and wrong is not so easily read, and in consequence, until the era arrives when international disputes shall be subject to a court of absolute jurisdiction, it is not possible to bring the causes of war under the domain of positive international law. As a confession of the practical inadequacy of his principles Vattel frankly admits that although a war cannot be just on both sides, yet owing to the fact that nations cannot presume to judge one another the war must be regarded as "lawful" on both sides, at least as regards its exterior effects.³³

It would be tedious to discuss in detail the various rules laid down by Vattel for the conduct of war both as regards the instruments to be employed and as regards the position of non-combatants and the status of public and private property during the occupation of territory by the enemy. On many points the law of war has made marked advances in the century and a half since the publication of Vattel's treatise. These advances are not so much due a change in the principles upon which war is conducted as to a recognition of the necessity of providing for the concrete application of acknowledged principles to actual warfare. It is the object of such conventions as that adopted at Geneva in 1864, the principles of which have now been adapted to maritime war, to provide specific regulations defining the conditions under which a duty already recognized in principle shall be carried out. On the other hand one cannot but be struck with the high moral character of the rules advanced by Vattel, though he is often placed in an embarrassing position in his efforts to reconcile abstract principle with military necessity.

In the chapter on neutrality Vattel shows himself considerably in advance of his time. He is the first writer to explain clearly the two fundamental principles of neutrality: first, that a nation must, in order to remain neutral, refrain from furnishing either

³³ Book III, §40.

party with troops, arms, or anything which is of direct use in war. This is not the same thing as furnishing equal help to both parties, for, as Vattel justly observes, the circumstances of the war may make what is equal assistance not equivalent assistance. Secondly, in all that does not relate to the war the neutral state must show a complete impartiality towards both belligerents.³⁴ Unfortunately Vattel qualifies his general rule in such a way as to deprive it of part of its value. He holds that if a state has bound itself to give help to one of the belligerents under a defensive alliance entered into prior to the war, it can give the assistance (it must be "moderate") without abandoning its position of neutrality.³⁵ Moreover, Vattel holds that a neutral may make loans of money to one belligerent and refuse them to the other, the discrimination being justified by the principle that a nation has a right to lend its money "where it thinks it has good security."³⁶ The absurdity of such quibbles reaches its highest point when Vattel attempts to justify a nation in granting to one belligerent permission to levy troops within its territory, and in refusing a like permission to the other belligerent, on the ground that the neutral state "might have reasons" for confiding its troops to one belligerent rather than to the other.³⁷ Vattel as a Swiss is defending the Swiss mercenaries.

It has not been possible to compare all of the rules formulated by Vattel with the corresponding rules in force at the present day, but it is thought that a sufficiently extensive comparison has been made to illustrate a general criticism of the author's authority as a classic writer on international law. The fundamental principles of international law as they are set forth in Vattel's treatise have remained practically unchanged down to the present day. It is true that in many instances Vattel deduces these principles from the law of nature by a process of reasoning which has ceased to have a controlling authority upon the thought of jurists and statesmen; but the fact that the author draws from *a priori*

³⁴ Book III, §104.

³⁵ Book III, §105.

³⁶ Book III, §110.

³⁷ Ibid.

sources does not affect the practical value of the rules themselves. At the present day positive international law and ideal international law are sharply distinguished. The international jurist sees it his primary task to present a statement of the actual rules in force between nations whether or not those rules commend themselves to his sense of justice or not. His second task which is often worked out along parallel lines with the first, is one of criticism. Here it is his duty to examine and test the existing rule by a standard borrowed from the rules of justice both as generally recognized by men in the abstract and as applied by them in the practical affairs of public and private life.

It will have been observed from several of the illustrations of Vattel's doctrine that the author is not always consistent when he comes to apply his general principles to the concrete situations of international politics. He is found qualifying his principles in such a way as to make it at times almost meaningless; he will condition his ideal rule in such a way as to make it fit in with established practice. In one instance, when discussing the balance of power, Vattel takes special pains to assure us that while an increase in the power of a neighboring prince does not give us in the abstract a right to make war against him, yet his misconduct in the past and the slightest act of injustice on his part in the present are sufficient to justify us in anticipating aggression and forestalling it. "This," Vattel says "will put statesmen at their ease and take away any reason for fear on their part, lest, by being too scrupulous in the observance of justice they are running the risk of being enslaved."³⁸ Such evasions are, perhaps, inseparable from the attempt to apply moral principles to the necessities of actual life.

But while there have been no radical changes in the fundamental principles of international law since the time of Vattel, the practical rules which represent the application of abstract principle to the intercourse of states have changed on many points. It is in this respect that Vattel's treatise has ceased to be of practical value for the statesman or the lawyer. Emigration

³⁸ Book III, §45.

from Europe to the new world has given rise to a qualified right of expatriation, commercial intercourse has given aliens a new status in foreign courts, the great rivers of Europe have been internationalized, non-political intervention in favor of citizens who have made investments in foreign countries has become a more important function of the state, while in the field of the laws of war and of neutrality the changes are innumerable.

It may be of interest to observe the opinion held of Vattel by a few of the more prominent writers on international law. Apart from mere eulogies there are several interesting criticisms. Wheaton, the distinguished representative of the United States in matters of international law during the first half of the 19th century, in introducing his elaborate exposition of Vattel's system of international law, quotes the words of Sir James Macintosh characterizing Vattel as a "diffuse, unscientific, but clear and liberal writer, whose work still maintains its place as the most convenient abridgment of a part of knowledge which calls for the skill of a new builder."³⁹ F. de Martens says that "the absence of well-founded principles, and numerous contradictions constitute the chief fault of Vattel. . . . But we frequently find in his book shrewd and intelligent remarks upon various questions, a correct interpretation of the historical facts which he instances, and in general humane views concerning the relation of states in time of war."⁴⁰ Heffter says that Vattel's work, "although superficial on many points, has by its charming style and practical character won for itself a place in the libraries of statesmen beside the work of Grotius."⁴¹ Rivier says that "although Vattel introduces many extraneous topics, international law obtained through him its place as an independent science, shook off the formalism of the Schoolmen and made its way into courts, embassies and cultured circles where it is still held in high regard in the form which he gave to it."⁴² Nys quotes the following criticism from Laurent's *Etudes sur l'histoire de l'humanité*: "We

³⁹ *History of the Law of Nations*, 182.

⁴⁰ *Traité de droit international*, i, 211, 212.

⁴¹ *Le droit international*, 34.

⁴² *Le droit international*, 449-450.

must not judge too severely the literature of international law during the 18th century; we can see from Vattel that it was in advance, and greatly so, of the ideas of the political world: and it was for the political world that Pufendorf, Wolff and Vattel wrote Vattel was the first to popularize the science, and this is the reason for the authority attaching to his name. If his work has been overrated, at least we must give credit to his high ideals: it is due to him that international law left the narrow circle of the doctrinaire to enter the wider and more influential society of men of letters.”⁴³

⁴³ *Le droit international*, i, 256.